



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2003

Ms. Alice Caruso
Assistant Disclosure Officer
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2003-7741

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190124.

The Texas Workforce Commission (the "commission") received two requests from the same requestor for information relating to two named individuals. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we must consider whether the commission has complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301 requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a

governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

You inform us that the commission received a request on August 11, 2003 for (1) the complete investigation file for a named unemployment claimant; (2) the complete personnel file for another named individual; and (3) all documents relating to any complaints made against the second individual. With respect to the August 11 request, the commission has complied with section 552.301. The submitted documents reflect, however, that the commission received a previous request from this same requestor for information relating to the same employment claimant and claim. According to the submitted documents, the commission received the previous request on August 7, 2003. The August 7 request is for (1) hearing tapes for all hearings conducted in the unemployment matter and (2) all documents relating to the matter. The commission did not request our decision within ten business days after its receipt of the August 7 request, as required by section 552.301(b). Thus, the commission has not complied with section 552.301 with regard to the August 7 request, and the information that is responsive to that request is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information from the public. *See Gov't Code* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982).

The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The commission's claim under section 552.107(1) of the Government Code is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 676 at 12 (2002) (harm to governmental body's interests under Gov't Code § 552.107(1) not compelling reason for non-disclosure). In failing to comply with section 552.301, the commission has waived its claim under section 552.107(1). *See Gov't Code* § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the commission may not withhold any information that is responsive to the August 7 request under section 552.107(1). The commission also claims, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code. A claim under section 552.101 can provide a compelling reason for non-disclosure under section 552.302. Furthermore, the August 7 request appears to encompass the information that the commission seeks to withhold under section 552.101. Therefore, we will address the commission's claim under section 552.101 with regard to the submitted information. We assume that the commission has released any other information that is responsive to the August 7 and August 11 requests, to the extent that such information existed when the commission received these requests. If not, then the commission must release any such information at this time. *See Gov't Code* §§ 552.301, .302; Open Records

Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the commission to release information that did not exist when it received these requests or to create responsive information.¹

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” The commission claims that the submitted information is confidential under federal law.² This office has stated that the regulations found at section 603 of title 20 of the Code of Federal Regulations send a clear message that “claim information” in the files of a state unemployment compensation agency is to be disclosed only to a “receiving agency,” as defined in the regulations, or to other specified parties. *See* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies such as the commission must protect the confidentiality of claim information. “Claim information” means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as “[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.” *See* 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of “claim information” and that the federal regulations prohibit the commission from disclosing this information. *See* Open Records Decision No. 476 at 4 (1987).

In this instance, the requestor has identified an unemployment claimant to whom the submitted information pertains. You state that the submitted information constitutes claim information. You inform us that the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the “labor department”) in administering state unemployment insurance (“UI”) programs and that a labor department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. You do not indicate, nor does it otherwise appear to this office, that any of the release provisions specified in the federal directive are applicable in this instance. Based on your representations and our review of the submitted information, we conclude that the information is made confidential by federal law. Therefore, the submitted information must be withheld from disclosure under section 552.101 of the Government Code.

¹*See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note that a federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor to Gov’t Code § 552.101).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID#

Enc: Submitted documents

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